

# Pay to play: How Michigan makes it hard to fight for property seized by police



Shantrese Kinnon of Grand Rapids speaks discussed her forfeiture case on November 9, 2015. (Jonathan Oosting | MLive.com)

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GRAND RAPIDS, MI — Shantrese Kinnon knew her husband was getting back into drugs, and she was trying to keep her distance when police raided their Grand Rapids rental house last year and found the 19 marijuana plants he was growing.

Kinnon was working three jobs, considering divorce and sleeping some nights in her car or at her sister's. Now, her husband is in prison, but she's still paying a price.

"I'm not saying what he did is okay, but you know, it shouldn't be something where I just had to lose everything," Kinnon, 44, said this week.

Police ended up seizing vehicles, computers and around \$400 in cash from Kinnon, who claimed the property had nothing to do with her husband's crime.

Then, after authorities had taken most of her valuable possessions, the city told her she'd have to pay more than \$2,000 for the chance to win them back in court.

It's called "cost bonding," a little-known aspect of [Michigan's civil asset forfeiture law](#), which allows police to seize property linked to a crime even if the owner is never charged or convicted.

Residents can fight forfeiture in civil court, but if their property has an estimated value of less than \$50,000, they have to post a 10 percent bond within 20 days just to begin the process.

If they can't pay, they can't play, and they lose their property for good.

"There's something of a catch-22 to the notion that the government can take all of your money and then say that you're not allowed to challenge the forfeiture unless you post a bond with even more money," said Dan Korobkin, an attorney with the ACLU of Michigan.

"There's something almost laughable about that kind of a system, except of course it's not laughing matter to the people who become entrapped in it."

In Kinnon's case, her uncle and mother-in-law helped her scrape together about \$1,100 for a bond, roughly half of the full amount she needed. As a result, she was forced to decide which property she would fight to keep.

Her 2010 Cadillac DTS didn't make the cut. She couldn't pay the bond associated with that vehicle, and police eventually turned it over to her credit union, which sold it for less than she owed.

But Kinnon, with the help of Grand Rapids attorney Sarah Riley Howard, who took the case on for free, was able to win back some of her other property.

Circuit Court Judge Donald Johnson, in a June 19 bench verdict, awarded Kinnon her laptop computer, a tablet, an 1986 Chevrolet El Camino that she said had no engine and \$398 in cash she had in her purse when police had arrested her at work in September of 2014. She also got back her bond.

Kinnon, accused of maintaining a drug house, entered a diversion program, paid fines and avoided a criminal conviction. But she lost her Cadillac, and the judge forfeited to the city a 2000 GMC Denali that didn't run and a 2002 Yamaha motorcycle. There was a dispute over whether Kinnon or her husband owned those two vehicles, and she's appealing that decision.

The initial arrest also cost Kinnon the rental house, her full-time airport job and a part-time position as a school bus driver, a job she'd held for five years and had cherished.

"I had to suffer for what he decided to do," Kinnon said of her husband, Quentin, who was convicted of manufacturing or delivering fewer than 20 plants or five kilograms of marijuana. He had been convicted of other drug crimes before they were married and was sentenced to between one and six years in prison.

She's now working a third-shift job, in part, because the schedule allows her to attend court hearings and deal with other legal matters during the day.

"It's really hard to hard to see good people go through this," said Howard, her attorney. "It really tends to victimize lower income folks who are working really hard, and that's exactly what I think happened here."

## FORFEITURE REFORM

Cases like Kinnon's have inspired an ongoing and bipartisan push to reform Michigan's civil asset forfeiture law, which is designed to prevent and deter criminals from profiting off illegal behavior.

State and local law enforcement agencies forfeited [more than \\$20.4 million](#) in cash and assets related to drug crimes in 2014, according to a report compiled by the Michigan State Police for the state Legislature.

"Through this program, Michigan's law enforcement community maintains its ability to systematically dismantle criminal enterprise and protect our citizens by interrupting the dangerous cycle of profiteering which results from the trafficking of illegal drugs in our communities," wrote MSP Director Kristie Etue.

But critics say Michigan's program also invites abuse by allowing law enforcement agencies to keep proceeds from cash, cars, homes and other property — effectively incentivizing them to seize property.

New [laws signed last month](#) by Gov. Rick Snyder will require police agencies to report more details of their forfeiture programs and will increase the bar on evidentiary standards in court, making it slightly easier for Michigan residents to win back seized property.

It's the first step in a broader effort to end the practice all together by requiring a criminal conviction before personal property can be forfeited.

State Rep. Pete Lucido, R-Shelby Township, wants to continue the reform effort by eliminating the 10 percent bond requirement in forfeiture claims. He [introduced legislation](#) in May and is hoping for a hearing soon in the House Judiciary Committee.

"There's no rational basis for posting this money, and on top of that, I found it somewhat repugnant in practice," said Lucido, who worked as an attorney before joining the Legislature at the start of the year.

The 10 percent bond figure is based on "arbitrary" estimates from police agencies who are not trained in appraisal, according to Lucido, who said they are not qualified to make such decisions.

The bonding requirement was originally designed to discourage criminals from making frivolous claims on property clearly linked to illegal activity, but critics say it creates a barrier to justice, especially for low-income residents.

## LEGAL CHALLENGES

Howard, in a June filing on behalf of Kinnon, argued that requiring an indigent person to post bond in a forfeiture case deprives them of due process and equal protection guarantees under the U.S. Constitution.

"She's a hard-working person, and she goes through quite an ordeal simply because she can't afford the cost of fighting it more," said Howard. "Most people can't afford to fight it at all."

While Michigan Court rules allow the indigent to seek waiver for a security bond, Howard argued that forfeiture law makes that difficult. Because Kinnon had to pay a bond to file a claim, she couldn't seek relief from a court her case was not yet before.

Judge Johnson rejected the argument, citing [a 1996 ruling](#) by the Michigan Court of Appeals, but that 19-year-old opinion was unpublished and is non-binding, and opponents are hoping to get the matter back before the appeals court.

The ACLU of Michigan, [in a separate forfeiture case](#), made 14th Amendment arguments on behalf of Alpena resident Carmen Villeneuve, who is accused of growing and selling marijuana. Police searched her home in August of 2014 and discovered \$19,940 in cash, which they promptly seized.

Villeneuve claimed the money came from disability payments and a car accident settlement — not drugs — but could not make that case in court because she failed to post a \$1,994 bond within 20 days.

"Is it constitutional for the state to first seize all of Ms. Villeneuve's money, and then deprive her of the ability to contest the forfeiture because, as a result of the seizure, she has no money to post a bond?" the ACLU asked in a motion.

Circuit Court Judge Michael G. Mack rejected the argument, but as the ACLU prepared to file an appeal with the Michigan Court of Appeals, the Alpena County Prosecutor's Office agreed to waive the bond. The earlier order was vacated and the forfeiture case will now move forward on its merits.

"The bond requirement is like a sign on the court house door that says, 'Wealthy people are welcome here, poor people go home.' That's what makes it unconstitutional," said Korobkin.

"It sets up a two-tier system of justice where you can't even get in the courthouse door unless you have enough money to pay the bond."

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